Quid Novi

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THE DEVIL YOU KNOW

by Joshua A. Fireman, BCL II

A lot of strange things are definitely happening in politics these days. Consider the fact that two Western provinces have recently elected NDP governments, while the right-wing Reform Party is riding high in the polls in that self-same region. Or else, how about the spectacle of seeing incumbent U.S. Senators actually lose their seats!

The political pundits have chalked these rather curious events up to something called "voter discontent." The theory goes something like this: The voters are so extraordinarily repulsed by the politicians that they have governing them at the moment that they are willing to vote for anything with a heartbeat if it means the scoundrels will be tossed out in to the unemployment lines.

At the time this article sees print, however, what the pundits are so quick to dismiss as a protest vote may have produced a result no one bargained for. There is a strong chance that as of this morning, David Duke is the Governor of the state of Louisiana.

Mr. Duke, you see, is a Nazi. Pure and simple. Since the age of fourteen, he has based his political ambitions on the lily-white firmament of religious and racial discord. He has been a model racist and anti-semite for decades now.

David Duke can boast of accomplishments that would make other white supremacists green with envy. At Louisiana State University in the late 1960s, he openly proclaimed himself to be a Nazi. In 1975, he had risen through the ranks of the Ku Klux Klan to become its Grand Wizard. In 1980, he founded the National Association for the Advancement of White People. In 1989, after his election to the Louisiana Legislature, he continued to sell Nazi literature from his office. Throughout the 1980s, he held parties in honour of Adolph Hitler's birthday.

And today, Duke is within a stone's throw of the governor's office. He has said that he should not be held to his past; that what he is espousing now are simple Christian values. He lashes out against the decay that is eating away at America from within. This decay is caused, of

Cont'd on p.4

THE MORNING AFTER

by Andreas Sauter, LLB II

Etymology seems to be the hot topic in the Quid this semester. Far be it from me to stop a trend. Have you ever partaken of liquor and spirits a little too indulgently, and wondered confusedly the next morning why anyone would have chosen the word "hangover" to describe your present state? Me too.

While Jay Sinha has pondered "penultimacy", and Andrew Deere has probed the parameters of "man", I propose to peruse the past of "hangover".

One possible origin of the word is a reference to common reactions one has when first awakening to the effects of overconsumption. One draws the bed covers (assuming one has made it to bed) over one's head, thus resulting in the cover "hanging over" the body. If covers should not be readily available, another frequent move is to drape one arm over the eyes, therby allowing the limb to

Cont'd on p.4

DANS CE NUMÉRO
IN THIS ISSUE

ANNOUNCEMENTS / ANNONCES

Careers - on November 23, the Faculty of Law at University of Montreal, in conjunction with the Canadian Bar Association, is having a careers day. There will be speakers discussing various topics, such as public vs. private practice, women lawyers, etc. There is an admission charge of $5. For more information, please see Nathalie Goldin.

National Civil Procedure - to all students who have suffered through National Civil Procedure (N.C.P.): the Curriculum Committee is currently studying the structure of this course. Si vous avez des commentaires, veuillez les faire parvenir à Phillipe de Grandpré. Phillipe has his own box in the L.S.A. office. Please do this as soon as possible.

Legal Aid Clinic - if you have written an in-class paper or a term éssay on a question of law that would be relevant to volunteers at the McGill Legal Information Clinic (i.e. Consumer Law, Civil rights, Family Law, Immigration Law, Landlord/ Tenant, etc.) - please contact Lucie Poirier at 6792 about dropping off a copy for us. Thank you

Forum National - presents Dr. Ralf Jurgens from the McGill Centre for Medicine, Ethics and Law. He will speak on Legal Human Rights and ethical issues raised by drug [ab]use in Canada on Wednesday, October 20th at noon in room 202.

Canadian Institute of International Affairs - The ICAI presents, in collaboration with the Faculty, Mr. Ralph Osterwoldt, legal counsel for the federal Dept. of the Environment, who will speak on the topic of «International Trade in Hazardous Products». The discussion will take place on Thursday, Nov. 21, at 12h30 p.m. in the Moot Court.

Astra Lectures in Ethics - presents Prof. Richard Sorabji, F.B.A. (King's College London) who will speak on «Animal Rights - Ancient and Modern» on Monday, November 18th at 18h00 in the Moot Court.

Legal Issues in the Medical Practice - ninth lecture: «The drunk or drugged doctor. Criminal negligence». The lecture will be held on Wednesday, November 20th at 19h30 in the Moot Court.

Legal Theory Workshop - presents Prof. Dennis Klinck (McGill/UNB) who will speak on «Evidence as Rhetoric: A Semiotic Perspective» on Friday, November 22nd at 12h00 in room 202.

COIN DES SPORTS CORNER

Public Offenders: a full line up of players struggled to get ice time in a match that tied at 1 all. Recent wing addition Corina S. performed splendidly, although she misses defence work. Trio of Hélène M., Sophie P. and Lucie P. showed dash, verve and skill, managing to organize amazing scoring opportunities.
Goalie Veronique (no initial needed - Did Elvis or Pélé need one?) did here utmost to preserve the tie in the last two minutes, as her defence collapsed. When all around were losing theirs, she kept her lion-maned blond/brown head, turning away shot after shot and earning the beleaguered admiration of the opposition and the team.
The team hopes that Quid readers are anticipating the January grudge match between the well-based elegant Public Offenders and the not quite as elegant and well-based Malum In Se!

GREEN SPACE: Strict Liability Upheld

by Julie Abouchar, Nat IV

For ministers of the environment, and environmentalists across Canada, October 24 was a happy day. The Supreme Court of Canada finally released its decision on R. v. Wholesale Travel (on reserve).

At issue were provisions that make misleading advertising an offence under the Competition Act, making possible a conviction without fault on the part of the regulated party. The provisions also create a statutory defence of due diligence, to be established by the accused on the balance of probabilities. The provisions were challenged as being unconstitutional with respect to the lack of a mens rea requirement (s. 7) and a reversal of the presumption of innocence (s. 11 (d)).

The Ministers of the Environment were probably holding their breath awaiting the arrival of the S.C.C. decision. A finding of unconstitutionality would, in effect, over-rule or make null the pre-Charter Sault Ste Marie (1978) decision. Sault Ste Marie had paved the way for regulations that could fine or imprison polluters on the proof of the act, so long as the accused could not prove that s/he took reasonable care to avoid the polluting act.

In the lengthy decision, the judges were unanimous in finding that it is not an infringement of s. 7 to create an offence for which the mens rea component is negligence, so that a due diligence defence is available.

On the reverse onus provision, the majority (Lamer, LaForest, Sopinka, Gonthier, McLachlin, Stevenson and Iacobucci, J.J.) found it unconstitutional, infringing s.11(d). However, three judges of this majority (Gonthier, Stevenson and Iacobucci, J.J.) found that the provision is justified under s.1 of the Charter; to avoid losing convictions because of evidentiary problems (due to the facts being in the hands of the accused) the override of s. 11(d) rights is warranted. In sum, the court finds that the reverse onus provision passes the Oakes test of constitutionality.

The significance of this case will be felt for many years to come. The strict liablity offences created in the pre-Charter period have survived a constitutional challenge. Strict liability pollution offences now sit on solid ground.

HOW A LAW PROFESSOR TELLS HIS CHILDREN THE STORY OF THE THREE BEARS.

by Edward A. Hogan, Jr.

[This story is taken out of the book Trials and Tribulations and reproduced for the reading pleasure of our friendly readers.]

Once upon a time (the exact date is not known, but it is not likely to be put in issue, since the memory of man runneth not to the contrary), a little girl (about whose parentage there is no issue and who will be presumed therefore to be legitimate) named Goldilocks wanted to visit her grandmother (whether paternal or maternal is immaterial) who lived on the other side of the forest (the exact location of which may be determined in metes and bounds by consulting the records of the Registry of Deeds in the county in which the said premises are located). Little Goldilocks was given permission by her parents. Throughout this narrative the parents will be presumed to be reasonable and prudent parents because they warned little Goldilocks of all known and foreseeable dangers and instructed her to be guided accordingly.

No Attractive Nuisance

When little Goldilocks was perambulating the perimeter of the forest, she was attracted by a single dwelling of unusual construction set back from the highway in a manner which conformed exactly to the zoning regulations lawfully enacted and promulgated. This was not, as you will note, an attractive nuisance since the object was one with which all children are familiar and the dangers of which, if any, are obvious.

Blackstone's Imaginary Fence

Disregarding the instructions of her prudent parents, she entered the land by crossing over the imaginary white fence which Blackstone says surrounds each parcel of realty. For this she became guilty of trespass *quare clausum fregit pedibus ambulando*. Knocking at the door and receiving no reply, she turned the knob, gave a good push and entered. This, as you know, was trespass *quare clausum fregit vi et armis*.

Trespass de Bonis Asportatis

She saw on the table three bowls of porridge. The first was too hot and the second was too cold. The third was just right so she ate it all up. This was trespass *de bonis asportatis*.

Inside the house she spied three chairs. She sat in the big chair, which belonged quite obviously to the Daddy bear, but it was too hard. (Since she did no harm this could be no trespass.) The medium-sized chair was too soft, so she sat in the little chair, which, she assumed, belonged to the baby bear. Since her weight exceeded the capacity of the chair, she broke it all down. Harm being done, she committed an ordinary trespass to personal property.

Two Schools of Thought

By that time little Goldilocks was tired. She found a bedroom with three beds. She tried the first and found it too hard, the second was too soft but the third was just right. So she lay down in the third, or baby bear's bed, and soon was fast asleep. It is not so easy to tell what kind of wrong this happens to be, and it may well be that on this point there are two schools of thought. It is not however trespass *quare clausum fregit vi et armis ab initio* since this misfeasance did not follow an entry under license of law.

The Proprietors Returned

While she was fast asleep, the proprietors of the premises returned. Angered and aroused at the torts and trespasses they sought out the tortfeasor. Baby Bear found her in his own little bed and raised a hue and cry. Just then little Goldilocks woke up, realized her predicament and ran home as fast as she could with the three bears in fresh and hot pursuit. She got home just in time to slam the door in the faces of three angry bears. It is a good thing she did too because now we do not have to decide if a bear can be guilty of assault and battery.

And now I think it would be a good idea for you to go to sleep before you make the discovery, made by judges in the courts before which I practiced, once upon a time, that most of what I have to say is incompetent, irrelevant and immaterial.

QUOTE OF THE WEEK

Prof. N. Kasirer dans le cours de Droit de la Famille, le 7 novembre :

«C'est difficile à distinguer, la séduction et le dol»

The Devil You Know
Cont'd from p.1

course, by a system promoting welfare classes (read: Blacks) and government sponsored affirmative-action programmes (read: women and minorities).

Make no mistake about it - David Duke is no fool. He has successfully adopted the language of the Reagan/Bush Republicans and shifted it several steps further to the right. He has tapped in to the insecurities of middle-class white Americans, who have been seeing their standard of living drop over the years. And, in so doing, he has, with great subtlety, found scapegoats in the country's religious and racial minorities, who can be targeted as the causes of America's decline.

Can a tiger change its stripes? That depends on whether you would be willing to take a chance on a man who as recently as 1989 said: «There's only one country anymore that's all white and that's Iceland. And Iceland is not enough.» Then again, David Duke is a born-again Christian. And we all know how sincere that must make him.

Protest votes can often have beneficial effects as they shake up the establishment and remind it about a little concept known as the will of the people. But, popular discontent can often be tapped by a person with all the right answers and all the wrong ideas. If David Duke is the Governor-elect of Louisiana today, the democratic process will have been pushed to absurd and terrifying extremes. The people of Louisiana will have chosen a Nazi to lead them.

Television analysts may try to write this off as an isolated incident of voter discontent. But, I have to feel somewhat worried when something so seemingly innocuous as a little discontent can result in Hitler's birthday being toasted in the Governor's office.

The Morning After
Cont'd from p.1

"hangover" the face, providing a shield from unwanted light. However, both these explanations are somewhat thin on credibility, since (in most cases) "hangover" describes feeling rather than position.

My research led me on a merry hunt until a less far-fetched explanation crossed my path. In Germany there is a port city called Hanover. Apparently, earlier in history, a German sailor arrived in a port in England after having slapped back a fair quantity of rum on his voyage. The sailor came reeling off the gangway in a rather haggard state. The English port authorities, winking at each other, asked him how he felt. The sailor's faulty command of the English language, having been further reduced by his disorientation, understood them to be asking where he was from. "Hanover", he replied. The port authorities rather enjoyed the German word they thought described the consequences of alcoholic indulgence, and brought it into common usage. The word has come down to us through the ages as the more nasal "hangover".

Not coincidentally, the Hanover family, who ruled England starting in 1714 (about the time the above incident alledgedly occurred), was reknown for its drinking prowess. The royals' lifeblood of liquor eventually led to its demise when the last of that line, Queen Victoria, eschewed both men and alcohol in unhealthy degrees. But I digress.

This story is far too long to be as convenient an explanation as a latin rootword, which no doubt is why the Concise Oxford Dictionary offers no hints as to the word's history. When one looks at other languages, one becomes even more puzzled that English, among the most inventive of languages, should have stumbled onto so happenstance a term for such a common indisposition.

The French, ever conscious of their palate, describe the feeling orally: "gueule de bois", or literally "mouth of wood". In English this is but a symtom of a hangover, colourfully known as "the pasties." The Spanish are somewhat more ardent in their word for the sensation: "la resaca". The basic idea is of something that turns upon itself. You may have one hell of a time imbibing the sangria, but in the morning it will make your head feel like a piñata. The German "katzenjammer" likens feline anguish to the sense of nausea. Translation: wail of a cat. The cry of a cat in pain is enough to make anyone cringe, not unlike scratching nails on a blackboard. That "Oh no, please stop" reaction is perhaps what the Germans find similar between a cat's cry and a hangover.

If any of the Quid readership has additional information regarding cultural or etymological aspects of hangovers, I would appreciate some feedback.

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Yugoslavia: The State of Nature

by Perry Narancic, LLB III

Hobbes, the great English political theorist, conceived of humans in their pre-social condition quite pessimistically. He described the «state of nature», as a «war of all against all» in which the desires and whims of human beings gave rise to capricious violence. Anyone who doubts that such a state of nature could actually exist, would have those doubts quashed by the consideration of ethnic strife in Yugoslavia.

Yugoslavia is a multi-national state composed of a patch-work of Balkan peoples. The map of Yugoslavia is like a leopard skin; besides large numbers of Serbs in Croatia, there are also large numbers of Albanians in southern Serbia, and Moslems in Bosnia, the central republic separating Serbia and Croatia. To divide Yugoslavia along ethnic lines would be impossible and an attempt to do so would invite disaster.

Such a disaster occurred during WW II when an independent Nazi Croatian state, in an attempt to «purge Croatia of foreign elements», instituted a policy of genocide that claimed the lives of 500,000 Serbs and 30,000 Jews (source: Encyclopedia of the Holocaust, p. 323, vol. 1). The present government of Croatia, headed by former Communist Franjo Tudjman, has denied the existence of this genocide, thereby provoking an uprising by Croatia's Serbian minority and igniting a bloody civil war. But the problems are not restricted to Croatia because for Serbia too has come under international pressure for its treatment of secessionist Albanians.

So is there any escape for the Yugoslavs from the state of nature? Hobbes conceived of people in the state of nature as coming to realize that their mutual interests were best served by promising not to kill each other and ordaining a sovereign to enforce these mutual promises. In my view, the only possible Leviathan with the requisite political strength to escape the Yugoslav state of nature is a new multi-party, democratic, federal state. (The last Yugoslavia, although federally structured, was run under a one-party system that made dissent and dialogue impossible and thereby, in my view, contributed to the current impasse).

As with individuals in civil society who pursue their own interests by respecting those of others, so in a new Yugoslavia it can be said that the interests of each group would be best guarentees by respecting the rights of other groups. The federal approach, of course, is not flawless because it will require heated constitutional negotiation and debate. Surely, however, the enlightened interests of the Yugoslav peoples would be better served in this way than through civil war.

Hobbes presupposes, of course, that people will be rational in determining their best interests. But if the irrational is as captivating as it has shown itself to be in the Yugoslav crisis, how can one escape the state of nature if it is impossible to escape human nature? Perhaps Hobbes was not pessimistic enough.

Another Day in the life of Nathalie Goldin, VP Civil

by Nathalie Goldin, BCL III

I know that you have all been eagerly awaiting yet another description of a day in the life of me. Wake the Kids! Call the neighbours! Yes, I shall tell you about another critical day, Thursday November 7, a day that will affect us all..... (excited?).

On November 7, C.A.D.E.D. and the Canadian Bar Association agreed as to the actual dates of the new hiring process in Quebec. This reform will be in force this year. The details are as follows:

*interviews will only be conducted as of March 2, 1992;

*offers for these summer jobs and stages cannot be made before April 1,1992;

*students must be, at least, in their second year of law school in order to be interviewed.

Furthermore, I shall be writing to the law firms asking for them to give McGill law students interviews as early as possible in the month of March, as we are the only students who have exams early on in the month of April.

If anyone has any questions or concerns, please do not hesitate to speak with me. Good luck on exams!

It may be «Sûretés immobilières» *but I like it*

by Greg Moore, BCL II

Attention polyglots! A committee has been set up to study bilingualism in the Faculty of Law. Headed by Prof. Jutras, the committee is made up of Associate Deans Jukier and Stevens, as well as Renée Thériault and Nathalie Goldin. The group will address concerns raised by students unhappy about having to take a semi-obligatory course in French this semester when they had no idea upon applying to McGill that they would have to take a course in their second language. Similarly, students have complained to the administration about the lack of courses and services available in French. The Faculty has a policy of «passive bilingualism», which means that students are free to express themselves in whichever of the two languages they choose, in whatever dealings they have with the Faculty. Unfortunately, this policy has never been formally expressed and not everyone is sure of its ramifications. The committee's job is to find out what people at law school think the policy towards bilingualism should be and to arrive at a proposal to be adopted by the Faculty.

Despite its perceived imperfections, the Faculty's type of bilingualism is the best I have come in contact with. Here, anglophones and francophones cannot help but meet and work with each other. In so doing, each group learns and becomes more proficient in its second language. Interaction is stimulated and enhanced by the variety of courses offered in both languages and by the number of professors who can teach in either language. This creates a richer and more dynamic environment than you would find in a unilingual law school.

The result of the Faculty's current policy is that McGill produces French common lawyers, who are needed in Ontario and New Brunswick, and English civilians, whose heightened linguistic skills may be able to prevent awkward loan words like «hypothec» and «superficies» from entering the legal lexicon in the future.

The committee should avoid steering the Faculty in the direction of total bilingualism. Before law school, I attended the University of Ottawa, the largest bilingual university in Canada, which is really two schools on one campus. In its efforts to accommodate the two language groups it has set up parallel structures. Just about every course offecred in one language has its equivalent in the other. There is an English newpaper and a French newspaper, an English theatre and a French theatre, an English history course and a French history course. As a result, shared experiences are few and those who are more bilingual at graduation than at initiation are the exception rather than the rule.

The committee must start with the premise that bilingualism is worthwhile . To deny this and to go back to a situation of unilingualism would be narrow-minded and self-defeating. The Faculty needs to strenghten what it has without going too far. For instance, more courses should be offered in French and these scheduled so as to avoid conflicts. This would allow anglophone students to take as many courses in French as they want, rather than as many as their schedulte will permit, while not forcing francophone students to enroll in unwanted courses in order to take a comfortable number in their mother tongue. Also, the Faculty may want to better publicize its policy of passive bilingualism. This way, students will be attracted by our bilingual nature rather than surprised by it in third year.

All students are encouraged to submit ideas, orally or in writing, to any member of the committee.